IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6477 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? (para 1 to 8 only) : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LP GAS EQUIPMENT PVT LTD.

Versus

SPECIFIED AUTHORITY CUM DY. COMMISSIONER OF LABOUR

Appearance:

1. Special Civil Application No. 6477 of 2003

MR KM PATEL for Petitioner No. 1

MR MK DAGLI, AGP for Respondent No. 1

MR PH PATHAK for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/07/2003

ORAL JUDGEMENT

#. In the present petition, the notice was issued on 7.5.2003 for the final disposal of this petition, and hence, formal order is passed issuing Rule returnable today. Mr.Dagli, learned AGP, waives service of rule for respondent No.1 and Mr.Pathak waives service of rule for respondent No.2.

#. Learned advocates appearing for both the sides in this matter have addressed their arguments, on merits.

#. The petitioner has filed this petition, challenging the orders at Annexures-A and B, respectively, passed by the Specified Authority under the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act", for short). Initially, the petitioner company preferred an application under Section 25-N of the Act for the purpose of getting permission to retrench certain workmen. The initial application preferred before the Specified Authority was numbered as Retrenchment Application No.2 of 2002. That application was rejected by the Specified Authority, by its order dated 20/11/2002, by observing that the application was not filed in the form prescribed as per the Rules. The authority observed that the petitioner should have applied by filling up the form, confirming to the Rules. It is also found that, as per the Industrial Disputes (Gujarat) Rule, 1966, the copy of such application was required to be given to the workmen, with all annexures, in the language which they can understand. Since the said requirement was not fulfilled, the application was rejected on the aforesaid technical ground, as, it was found that the same was not given in the prescribed manner. At page 15 of the compilation, the Specified Authority itself has found that the application of the Management is required to be rejected in view of the technical reason, as, the same is not, prima facie, maintainable. The petitioner, thereafter, again applied for getting permission for retrenchment, by rectifying the mistake, which was made earlier, and, the subsequent application was filed in the prescribed form, rectifying the earlier procedural mistake. The Specified Authority, by its order dated 31.12.2002, rejected the said application on the ground that since the earlier application is rejected by the authority on 20.11.2002, which is at Annexure-A in the compilation, second application is not maintainable within a period of one year as per the provisions of Section 25-N(5), as, the earlier order remains in force for a period of one year. It is found that, therefore, subsequent application is not maintainable within a

period of one year from the date of rejection of the earlier application. The said order is annexed by the petitioner at Annexure-B in the petition. The petitioner has challenged both the orders, i.e., the orders at Annexures-A and B in the compilation.

#. So far as the order at Annexure-A is concerned, in my view, the Specified Authority was absolutely justified in rejecting the same on the preliminary ground, as, it is not in dispute that the said application was not filed after following the procedure prescribed under the Rules. It cannot be said that the order of the authority, rejecting the application at Annexure-A, is, in any way, illegal or contrary to law, especially when it is not in dispute that the procedure prescribed under the Rules is not followed by the petitioner at the time of preferring the first application, which is rejected by the order at Annexure-A. In view of the same, in my view, the order at Annexure-A is not required to be interfered with by this Court in the present petition.

#. So far as the second contention of Mr.Patel in respect of the order at Annexure-B is concerned, the petitioner is on a stronger footing. It is not in dispute that so far as the second order, i.e. the order dated 31.12.2002, is concerned, the said order is passed by the Specified Authority without deciding the question and issues, on merits. Second application, which is filed by the petitioner, after rectifying the error, is not decided by the Specified Authority on merits, as, the same is rejected on the ground that the same is not maintainable in view of the fact the same is filed within a period of one year from the date of passing of the earlier order. At this juncture, reference is required to be made to Section 25-N of the Act, which reads as under.:

"[25-N. Conditions precedent to retrenchment of workman.-

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid

in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority, may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication :

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

#. Considering the aforesaid provisions, especially the provisions contained in Section 25-N (3) as well as sub-section (5) of Section 25-N of the Act, it is clear that, while deciding such application under subsection

(3), the authority is required to follow the procedure for granting or refusing the permission. After making necessary inquiry and after giving reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment and after considering the say of the respective parties, the authority is required to take decision granting or refusing such permission, as prayed for. There is a complete procedure prescribed under sub-section (3) of Section 25-N of the Act. If any decision is taken after following the aforesaid procedure prescribed under sub-section (3) of Section 25-N of the Act, in my view, such order remains in force for a period of one year and such decision will be final and binding to all the parties for a period of one year from the date of passing such order.

#. Considering both the provisions together, it is clear that if the Specified Authority passes the order after following the prescribed procedure under sub-section (3) of Section 25-N of the Act, then such order will remain in force for a period of one year. However, in the instant case, it is not in dispute that the Specified Authority, while rejecting the earlier application of the petitioner, had not rejected the application after following the procedure as envisaged by sub-section (3) of Section 25-N of the Act, but, the application was rejected on a technical ground. At the time of making the application, the authority itself has found that the earlier application was rejected in view of the technical defect. It is, therefore, clear that, the said rejection cannot be said to be a rejection on merits, as contemplated by sub-section (3) of Section 25-N of the Act. It is not in dispute that the earlier application of the petitioner was not decided by following the said procedure prescribed under Section 25-N of the Act. In fact, the application of the petitioner was not entertained because of the procedural irregularities and defect since the petitioner had not applied for such permission in the prescribed form. It, therefore, cannot be said that the authority, after application of mind, has rejected that application, which would disentitle the Management to apply again within a period of one year. As the authority has not even entertained the application in view of the procedural irregularity, in my view, the aforesaid bar under sub-section (5) applies only to cases where such decision is taken on merits. In the instant case, the earlier order passed by the authority can never be termed as "an order passed on merits." In fact, the application was not entertained because of the defect in submitting the application and that the merits of the

case, whether it is a fit case in which retrenchment permission is required to be granted or not, were never taken into consideration by the authority while rejecting the earlier application. If that be so, naturally, the subsequent application, which is submitted after curing the defect, is certainly maintainable and the bar under sub-section (5) of Section 25-N of the Act can never be made applicable for entertaining the second application. It is, however, clear that, if the earlier application was disposed of by following the provisions of either sub-section (3) or sub-section (4) of Section 25-N of the Act, as the case may be, then in such cases provisions of sub-section (5) of Section 25-N of the Act will come into force, by which prohibition for filing another application within a period of one year will be applicable. In the instant case, since no decision was taken on merits, in any manner worth the name, in connection with the issue in question and since it was rejected merely on a technical ground, it cannot be said that the second application is barred under sub-section (5) of Section 25-N of the Act. In that view of the matter, the order at Annexure-B is required to be quashed and set aside and the matter is required to be sent back to the Specified Authority for decision afresh in accordance with law. It is clarified that this Court has not pronounced on the merits of the issue in any manner, nor has this Court suggested anything, whether still the second application made is as per the procedure or not, as, it is for the authority to decide all these questions afresh. The matter is required to be sent back to the authority, as, the authority has not considered the case on merits, but, has merely stated that the application is not maintainable in view of sub-section (5) of Section 25-N of the Act. The said decision of the authority is unsustainable, and, that is why the matter is required to be sent back to the authority for a fresh decision. The authority is directed to decide the application afresh after following the procedure as prescribed under Section 25-N of the Act.

#. Since the matter is sent back to the Specified Authority, counting of sixty days' period will start from 01/08/2003, because, the learned advocates for both the sides have agreed that they will appear before the Deputy Commissioner of Labour on the aforesaid date, and, therefore, that date is to be taken as the starting point for the purpose of calculating sixty days' period, as envisaged under the Act.

It is needless to say that the respondent - Union is permitted to raise before the Specified Authority all

available contentions, including the contention about procedural defect, if any, even in the second application, in accordance with law and, it is for the authority to decide all these questions in accordance with law.

#. At this stage, Mr.Pathak submitted that, since last more than six months, the employees have not been paid their regular salary. At this stage, a suggestion was made by the Court to Mr.Patel, learned advocate for the petitioner, to see that some ad hoc payment is made to the concerned workmen, as, they are without salary since long. Mr.Patel, however, pointed out that the petitioner company is facing financial difficulties. He submitted that the Management will try to see that some ad hoc payment is made to the concerned workmen at the earliest. However, he has fairly submitted that, it is not possible for him to give any commitment on this aspect. In the facts and circumstances of the case, it is hoped that the Management will take a just decision in this connection and that the Management will try to see that a payment ranging between Rs.1500/- and Rs.2000/-, will be made. However, this question is left to the Management, but, I am sure that, in the facts and circumstances of the case, a just decision will be taken by the Management in this behalf. Even otherwise, it is always open for the respondent Union to take out appropriate proceedings in this behalf, as, this Court cannot give any specific direction on this aspect in the present proceedings.

##. In view of what is stated above, the petition is partly allowed. The order at Annexure-B is quashed and set aside. The matter is remanded to the Specified Authority for a fresh decision, as indicated above. The petitioner as well as respondent No.2 may appear before the Specified Authority, i.e. Deputy Commissioner of Labour, Vadodara, on 1/8/2003 between 11.00 a.m. and 12.00 noon. In view of the urgency of the matter, office is directed to give certified copy of this order, on submission of application, at the earliest. It is made clear that, so far as the date for appearance before the Specified Authority is concerned, the same is given in view of the consent given by the contesting parties, viz., the petitioner and respondent No.2, and they have agreed that they will appear before the Specified Authority, as indicated above. It is clarified that, if any ad hoc payment is made by the Management, the same will be subject to the final outcome of these proceedings.

Rule is accordingly made absolute partly, with no

order as to costs.

##. The parties may take direct service of this order for producing the same before the Deputy Commissioner of Labour.

(P.B.Majmudar,J)
(pathan)